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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,950	10/10/2001	Syuji Tsukamoto	107292-00027	4804

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OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

EXAMINER

PATEL, GAUTAM

ART UNIT	PAPER NUMBER
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2655

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/972,950	Applicant(s) TSUKAMOTO, SYUJI	
	Examiner Gautam R. Patel	Art Unit 2655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,8,9 and 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment:

1. This is in response to amendment filed on 11-23-04.
2. Claims 1-16 remain for examination. Claims 1-4, 7, 10-12 and 16 were elected for prosecution.

RESTRICTION/ELECTION

3. The Applicants are strongly urged to cancel all non-elected claims, such as 5-6, 8-9 and 13-16.
4. Applicant's arguments regarding rejection of claims 1-4 and 7 under 35 U.S.C. § 112 first and second paragraph have been fully considered and rejection of claims 1-4 and 7 under 35 U.S.C. 112 first and second paragraph has been withdrawn.
5. Rejection of double patenting is withdrawn in light of the enclosed Terminal Disclaimer.

Claim Rejections - 35 U.S.C. § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-4, 7 and 10-12 are rejected under 35 U.S.C. § 102(a) as being anticipated by Arioka et al., JPO 2000-312879 (hereafter Arioka).

As to claim 1, Arioka discloses the invention as claimed [see Figs. 1 and 3] including continuously forming plural virtual recording cells, setting five stages, and forming recording marks, comprising the steps of:

An optical multi-level recording medium, including a reflective layer and a recording layer, and constructed in a manner that a recording mark is formed on the recording layer by irradiating a laser beam so as to record information,

plural virtual recording cells being continuously formed in a relative moving direction to

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the laser beam on the recording layer, each of which has an arbitrary unit length and a unit width perpendicular to the unit length in the relative moving direction,

five stages or more irradiation times being set with respect to the virtual recording cell so that the irradiation time becomes long successively from the first to final stages,

a power average value of laser beam in a specific irradiation time of the plural-stage irradiation times being set so as to become larger than a power average value of another irradiation time longer than the specific irradiation time; and

recording marks being formed in the virtual recording cell and giving five stages or more different optical reflectance to the virtual recording cell when the laser beam is irradiated to the virtual recording cell [paragraph 15-25; para. 28-31 and para. 72-79 and figs. 1 and 3].

7. The aforementioned claim 2, recites the following steps, inter alia, disclosed in Arioka:

plural irradiation times from the first stage to at least second stage, a power average value of laser beam of each stage is set so as to become longer than a power average value of another irradiation time longer than the plural irradiation times [paragraph 15-25; para. 28-31 and para. 72-79 and figs. 1 and 3].

8. The aforementioned claim 3, recites the following steps, inter alia, disclosed in Arioka:

at least first stage irradiation time, the power of laser beam is set larger than a reference power until the midway time point from the irradiation start time point, and is set to the reference power until the termination time from the midway time point, and in another irradiation time longer than the irradiation time, the power of laser beam is set to the reference power until the termination time from the irradiation start time point [paragraph 15-25; para. 28-31 and para. 72-79 and figs. 1 and 3].

9. The aforementioned claim 4, recites the following steps, inter alia, disclosed in Arioka:

at least first stage irradiation time, the power of laser beam is set larger than a reference power until the midway time point from the irradiation start time point, and is set to the reference

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power until the termination time from the midway time point, and in another irradiation time longer than the irradiation time, the power of laser beam is set to the reference power until the termination time from the irradiation start time point [paragraph 15-25; para. 28-31 and para. 72-79 and figs. 1 and 3].

10. The aforementioned claim 7, recites the following steps, inter alia, disclosed in Arioka: the recording layer contains an organic dye [para. 24].

11. The aforementioned claim 10, recites the following steps, inter alia, disclosed in Arioka: continuously forming plural virtual recording cells, each of which has an arbitrary unit length and a unit width perpendicular to the unit length in a relative moving direction to the laser beam, in the relative moving direction, with respect to the recording layer;

setting five stages or more irradiation times with respect to the virtual recording cell so that the irradiation time becomes long successively from the first to final stages; setting a power average value of laser beam in a specific irradiation time of the plural-stage irradiation times so as to become larger than a power average value of another irradiation time longer than the specific irradiation time; and

forming recording marks being formed in the virtual recording cell and giving five stages or more different optical reflectance to the virtual recording cell when the laser beam is irradiated to the virtual recording cell [paragraph 15-25; para. 28-31 and para. 72-79 and figs. 1 and 3].

12. The aforementioned claim 11, recites the following steps, inter alia, disclosed in Arioka: the plural irradiation times from the first stage to at least second stage, a power average value of laser beam of each stage is set so as to become longer than a power average value of another irradiation time longer than the plural irradiation times [paragraph 15-25; para. 28-31 and para. 72-79 and figs. 1 and 3].

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13. The aforementioned claim 12, recites the following steps, inter alia, disclosed in Arioka:
at least first stage irradiation time, the power of laser beam is set larger than a reference power until the midway time point from the irradiation start time point, and is set to the reference power until the termination time from the midway time point, and in another irradiation time longer than the irradiation time, the power of laser beam is set to the reference power until the termination time from the irradiation start time point [paragraph 15-25; para. 28-31 and para. 72-79 and figs. 1 and 3].
14. Applicant's arguments filed on 11-23-04 have been fully considered but they are not deemed to be persuasive for the following reasons.

In the REMARKS, the Applicant argues as follows:

A) That: "Arioka does not constitute prior art. Arioka's filing data in Japan is October 13, 2000 and claims priority ... The Examiner cites to figures 1 and 3 of Arioka in rejecting the claims. However, Figures 1 and 3 of Arioka are not disclosed in Arioka's priority document no. ... "virtual recording cell" are not disclosed in the priority document ..

However the present application claims priority from JP .. filed October 10, 2000 [original emphasis]. Thus, Arioka does not constitute prior art." [page 9, para. 4-5].

FIRST: The Applicants are correct that original priority document does not have figures or virtual recording cell as argued by the Applicants are however subsequent document does have these limitations as understood by the Applicants and the Examiner.

SECOND: The examiner was NOT using the priority date of the Arioka at all. Even if the Examiner wanted to use the priority date he, unfortunately, could not have used it in the first place. The examiner was using the publication date of Arioka, which is October 13, 2000.

THIRD: Now as to the Applicants priority date being October 10, 2000 is immaterial at this point in time, because **NO TRANSLATION** has been provided of the original priority document. This is required to check and make sure, just like Arioka, that the Applicants has also claimed if these aspects are also claimed in the original document.

Also see following paragraph:

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“Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.”.

15. Applicant's amendment necessitated the new grounds of rejection presented in this office action. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gautam R. Patel whose telephone number is 571-272-7625. The examiner can normally be reached on Monday through Thursday from 7:30 to 6.

The appropriate fax number for the organization (Group 2650) where this application or proceeding is assigned is 703-872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Doris To can be reached on (571) 272-7629.

Any inquiry of a general nature or relating to the status of this application should be directed to the Electronic Business Center whose telephone number is 866-217-9197 or the USPTO contact Center telephone number is (800) PTO-9199.

Gautam R. Patel
Primary Examiner
Group Art Unit 2655



GAUTAM R. PATEL
PRIMARY EXAMINER

April 17, 2005